

## SCHEDULE 25 – ACQUISITION MAIL TERMS AND CONDITIONS

### 1 Introduction

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- 1.1 These special service terms and conditions are supplementary to the Australia Post Terms and Conditions and to the extent that any aspect of this special service is not expressly included herein, the Australia Post Terms and Conditions apply.
- 1.2 These special service terms and conditions and the Service Guide apply when you agree to accept the Acquisition Mail terms and conditions in Campaign Targeter.

### 2 Interpretation

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- 2.1 Except where expressly defined, all words and phrases used in this Agreement shall have the same meaning given to them in the *Australian Postal Corporation Act 1989* and in the Australia Post Terms and Conditions provided, however, that to the extent of any inconsistency, the meaning shall be as defined in this Agreement.
- 2.2 In this Agreement, unless the contrary intention appears:
  - 2.2.1 where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have a corresponding meaning;
  - 2.2.2 words importing a gender include any other gender; and
  - 2.2.3 words in the singular number include the plural and words in the plural number include the singular.
- 2.3 "**Acquisition Mail article**" means an article complying with all requirements set out in the Service Guide.
- 2.4 "**Acquisition Mail Data**" means the data file containing a list of address points supplied by Australia Post to a customer as part of the Service pursuant to this Agreement.
- 2.5 "**Agreement**" means an agreement between Australia Post and a customer formed pursuant to clause 1.2.
- 2.6 "**advertiser**" means the organisation that is promoting their products and/or services in the mail campaign.
- 2.7 "**customer**" means an organisation that uses the Acquisition Mail Service.
- 2.8 "**insolvency event**" means for any corporation, the liquidation, administration, official management, compromise, arrangement, amalgamation, reconstruction, winding up or dissolution or analogous occurrence of that corporation, and for a natural person means an assignment for the benefit of creditors, an arrangement or composition with creditors, bankruptcy, incapacity to deal with one's affairs, gaoling, death or analogous occurrence.
- 2.9 "**mail campaign**" means all of the Acquisition Mail articles lodged with Australia Post pursuant to an Agreement and part of one complete registration to which a single "Job ID Number " has been provided.
- 2.10 "**Service**" means the Acquisition Mail service as set out herein and as described in the Service Guide.
- 2.11 "**Service Guide**" means the Acquisition Mail Service Guide 8839559, or equivalent publication published by Australia Post from time to time.

### **3 Rates and Charges**

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- 3.1 The customer shall pay to Australia Post the relevant postal charges for the provision of the Service as determined by Australia Post and published from time to time.
  - 3.1.1 The customer may pay these charges using their Australia Post account, postage meter or over the counter using a payment method accepted by the Australia Post facility where they lodge their mail. Payment methods are offered and are available at the discretion of Australia Post, and particular limitations, conditions and requirements for payment by designated methods may apply to different ordering channels.
- 3.2 Notwithstanding termination of this Agreement pursuant to clause 15, the customer shall remain liable to pay to Australia Post any charges or postage due for any Acquisition Mail data supplied or Acquisition Mail articles carried pursuant to this Agreement prior to the date of termination.
- 3.3 Failure to comply with this Agreement and the Service Guide may result in:
  - 3.3.1 the customer forfeiting their right to the Acquisition Mail postage rate and the applicable postage rate being applied and or Australia Post limiting or withdrawing the customers access to Acquisition Mail and Campaign Targeter. The applicable postage rate is determined by the size of the article, how it is prepared by the customer, the quantity of articles being lodged for the campaign as well as where the articles are being sent.
  - 3.3.2 Australia Post reserves the right to amend the postage rate charged even after articles have been lodged and accepted as Acquisition Mail articles;
  - 3.3.3 A charge of up to \$0.10 per address point supplied.
  - 3.3.4 Australia Post limiting or withdrawing the customers access to Acquisition Mail and Campaign Targeter.

### **4 General Conditions of the Service**

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- 4.1 The customer must lodge Acquisition Mail articles in accordance with this Agreement including, without limitation, all requirements relating to content, mail preparation, addressing and lodgement outlined in the Service Guide.
- 4.2 Customers using the service must register and create each mail campaign online using Campaign Targeter.
- 4.3 Each campaign must be created separately and will be subject to a new agreement between Australia Post and the customer.
- 4.4 Acquisition Mail Data is supplied by Australia Post solely in relation to the provision of the Service for one mail campaign and must not be used in relation to any subsequent mail campaign or for any other purpose.
- 4.5 The customer must not divulge the outcome of the mail campaign to any third party, other than the advertiser, and must procure that the advertiser, does not divulge the outcome of the mail campaign to any other person without Australia Post's prior written consent.

## **5 Intellectual Property**

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- 5.1 Nothing in this Agreement is intended to, or has the effect of, transferring ownership of any pre-existing intellectual property rights.
- 5.2 The customer acknowledges that Australia Post is the sole owner of all intellectual property in all matters, things or processes (including, but not limited to, hardware and software) utilised by Australia Post in connection with the provision of the Service including without limitation all intellectual property in the Acquisition Mail Data.

## **6 Customer's Warranty & Indemnity**

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- 6.1 The customer warrants and agrees that:
  - 6.1.1 it has obtained the approval of Australia Post to use the service at the approved lodgement point/s;
  - 6.1.2 at lodgement an unsealed sample of the Acquisition Mail will be provided for inspection that is representative of the contents of the accompanying batch of letters to ensure the sample and accompanying Promotional Letters satisfy the Mailing Conditions. The sample provided to Australia Post may not be returned and may be destroyed;
  - 6.1.3 all articles lodged (whether by it or any other person) comply with the requirements set out in the Service Guide current as at the date of lodgement;
  - 6.1.4 the content of the Acquisition Mail articles lodged comply in all respects with the Competition and Consumer Act 2010 (Cth), the Privacy Act 1988 (Cth), the Australian Postal Corporation Act 1989 (Cth) and any other relevant legislation;
  - 6.1.5 where the charge account details supplied at the time of registration for the service are not the customers, the customer warrants that it has the written authority permitting the customer to use the charge account, and
  - 6.1.6 to the extent permitted by law, it will indemnify Australia Post against any loss or damage arising from a breach of any of the warranties in clause 7.1.

## **7 Discretionary Carriage and Lodgement**

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- 7.1 Australia Post may, in its sole and absolute discretion:
  - 7.1.1 refuse to carry; or
  - 7.1.2 charge the customer postage at ordinary post rates in respect of any articles lodged that do not comply with the Service Guide.
- 7.2 Australia Post may, in its sole and absolute discretion, direct a customer to lodge Acquisition Mail articles at any Australia Post lodgement facility.

## **8 No Other Service**

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- 8.1 The service cannot be used in conjunction with any other Australia Post services except as otherwise provided under a separate written agreement between a customer and Australia Post.

## **9 Assignment**

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- 9.1 The customer may not transfer its rights or obligations under This Agreement to any other entity or person without the prior written consent of Australia Post. Such consent will not be unreasonably withheld. Any purported transfer without such consent shall be void and of no effect.
- 9.2 Where the customer being a partnership, is reconstituted by the retirement or addition of partners, the reconstituted partnership is deemed to be the customer.

## **10 Limitation of Liability Release and Indemnity**

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- 10.1 Subject to clause 10.2 and the Australia Post Terms and Conditions, Australia Post shall not be liable to any person (whether in contract, tort or otherwise) for any loss or damage suffered, or that may be suffered, as a result of any act or omission, whether negligent or otherwise, by or on behalf of Australia Post in relation to the provision of the service, or any other matter or thing relating to this Agreement.
- 10.2 To the extent permitted by law, Australia Post expressly disclaims all conditions and warranties, express or implied, in respect of the service and the carriage of Acquisition Mail articles pursuant to this Agreement. Where the law precludes such exclusion and implies certain conditions and warranties into this Agreement, the liability of Australia Post for breach of such condition or warranty shall be limited, if legally permissible, to:
- 10.2.1 supplying the service again; or
  - 10.2.2 payment of the cost of having the service supplied again.
- 10.3 To the extent permitted by law, the customer shall release and indemnify Australia Post against any loss or damage whatsoever which Australia Post may suffer as a result of any action, proceeding, claim, demand or prosecution arising from the provision of the service, or any other matter or thing arising as a result of this Agreement, including loss or damage arising from the negligent acts or omissions of Australia Post, pursuant to this Agreement.

## **11 Force Majeure**

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- 11.1 Australia Post shall not be in default under or in connection with the terms of this Agreement nor liable for failure to observe or perform in accordance with any provision of this Agreement for any reason or cause which could not with reasonable diligence be controlled or prevented by it, including without limitation, war, insurrection, riot, civil commotion, strikes, lock-outs, labour or industrial disputes, acts of God, acts of Governments or flood, storm, tempest, power shortages or power failure, inability to obtain sufficient labour, raw materials, fuel or utilities. During the period of an incident or incidents of "Force Majeure" this Agreement shall be suspended and delivery will recommence after the incident or incidents of "Force Majeure" end.

## **12 Merger**

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- 12.1 All the rights, immunities and limitations of liability in this Agreement shall continue to have their full force and effect in all circumstances notwithstanding any breach of contract or of any conditions hereof by Australia Post.

## 13 Termination

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- 13.1 Australia Post may, in its sole and absolute discretion, terminate this Agreement and/or any approval granted to a customer to use the service, effective immediately, on written notice to the customer where:
- 13.1.1 the customer breaches or otherwise acts in a manner contrary to the Act, Australia Post Terms and Conditions, the Service Guide or other written instructions published by Australia Post in connection with the Service or the use or handling of Acquisition Mail Data;
  - 13.1.2 the customer fails, refuses, neglects or otherwise omits to properly discharge and perform any of its obligations under this Agreement;
  - 13.1.3 the customer fails, refuses, neglects or otherwise omits to remedy any breach of this Agreement as and when required to do so by Australia Post; or
  - 13.1.4 an insolvency event occurs in relation to the customer.
- 13.2 Australia Post may, without cause, in its sole and absolute discretion, terminate this Agreement and/or any approval granted to a customer to use the service on fourteen days written notice to the customer.

## 14 Variation

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- 14.1 This Agreement may be varied or added to from time to time by Australia Post by notice in writing to the customer.
- 14.1.1 The customer acknowledges and agrees that the processes and requirements set out in the Service Guide may change from time to time. The customer is responsible for ensuring that its mail campaign complies with the current version of the Service Guide which may be found at [www.auspost.com.au](http://www.auspost.com.au).

## 15 Notice

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- 15.1 Any notice required to be served by or under these terms and conditions shall be sufficiently given to the customer if left at or sent by post addressed to the customer at its last known or usual place of address and to Australia Post if sent by post to the appropriate State Administration at its current address.

## 16 Conditions of Carriage

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- 16.1 This Agreement shall not constitute or imply any agreement between Australia Post and the customer (or any undertaking or obligation whatsoever on the part of Australia Post) with respect of the carriage of any postal article. *The Australian Postal Corporation Act 1989*, the Regulations and the Australia Post Terms and Conditions and other written instructions published by Australia Post from time to time shall apply to the carriage of articles issued pursuant to the service except to the extent that they are inconsistent with this Agreement.

## **17 Law**

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- 17.1 This Agreement is governed by, and shall be construed in accordance with the laws in force in the State of Victoria and the courts and registries of courts in that State shall have jurisdiction in the event of a dispute.

## **18 Whole agreement**

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- 18.1 Subject to clause 1.1 this Agreement contains the whole of the agreement between the parties in relation to the Service and any representation or warranty made by either party prior to entering into this Agreement shall have no force or effect unless otherwise stated herein.